Supreme Court, U.S.
FILED

02 645 OCT 24 2002

OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

Scott Booth, Thomas D. Loyd, Frank Solchaga, David Witte, Scott Wyman, Charles Perrin, Knute Gladen, Michael Seeber, Terry Nyblom, Stephen Blake, Richard Doyle, William J. Hagerman, Charles W. Hurd, Kyle Knutson, Jim Lovestar, Yves Nadeau, and Pradeep Ramanathan on behalf of themselves of others similar situated,

Petitioners,

v.

Sheryl Ramstad Hvass, Commissioner of Corrections, Michaal O'Keefe, Commissioner of Human Services; Charles R. Weaver, Commissioner of Public Safety, Christine Jax, Commissioner of Children, Families, and Learning for the State of Minnesota; *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOHN REMINGTON GRAHAM
Counsel of Record
180 Haut de la Paroisse
St-Agapit, Quebec G0S 1Z0
Canada
(418) 888-5049

MARK A. OLSON
(Admission Pending)
2605 E. Cliff Road
Burnsville, MN 55337
(952) 894-8893

Counsel for the Petitioners

Of Counsel:
Joseph R. Sahid,
Of the New York Bar
845 Third Avenue, 20th Flr.
New York, New York 10022

2002 – Bachman Legal Printing ■ (612) 339-9518 ■ 1-800-715-3582 ■ Fax (612) 337-8053

82 pp

QUESTIONS PRESENTED FOR REVIEW

1. Do the petitioners as male residents, citizens, and taxpayers of the State of Minnesota have standing to sue in federal court for a declaratory judgment condemning, and an injunction enjoining public spending, particularly money appropriated by the Minnesota Legislature under the Minnesota Battered Women's Act, insofar as they claim that such public spending by the State of Minnesota is forbidden by the equal protection cause of Amendment XIV, buttressed by Amendment XIX of the United States Constitution?

2. Specifically, does such state taxpayer standing exist in this case under *Crampton v. Zabriski*, 101 U. S. 601 at 609 (1880), insofar as such state taxpayers' suit is brought in federal court upon a proper basis of federal jurisdiction against several departments of the state government responsible for distribution of the funds appropriated under the Minnesota Battered Women's Act?

3. The 8th Circuit has held in *Tarsney v. O'Keefe*, 225 F. 3d 929 (8 Cir. 2000), that state taxpayer standing to sue in federal court to restrain public spending by a state legislature is limited by the same principles as limit federal taxpayer standing to sue in federal court to restrain public spending by Congress in *Flast v. Cohen*, 392 U. S. 83 (1968), and that the free exercise clause in the United States Constitution is not a specific limitation on the power of public spending. A writ of certiorari was denied by this Court for review of *Tarsney*. Assuming that the majority in *Tarsney* was right, does the *guarantee of equal protection*, like the establishment clause in the United States Constitution constitute a specific limitation on the power of public spending as required in *Flast v. Cohen*, 392 U. S. at 105-106?

4. Specifically, does the *guarantee of equal protection* as it relates to race discrimination and/or sex discrimination constitute a specific limitation on the power of public spending as held in *Plessy v. Ferguson*, 163 U. S. 537 (1896); *Brown v. Board of Education*, 347 U. S. 383 (1954); *Bolling v. Sharpe*, 347 U. S. 497 (1954); *Frontiero v. Richardson*, 411 U. S.

677 (1973); *Weinberger v. Wiesenfeld*, 420 U. S. 636 (1975); *Califano v. Goldfarb*, 430 U. S. 199 (1977); *Califano v. Westcott*, 443 U. S. 76 (1979); *Wengler v. Druggists*, 446 U. S. 142 (1980); *Mississippi University for Women v. Hogan*, 458 U. S. 718 (1982); and *United States v. Virginia*, 515 U. S. 518 (1996)?

5. Assuming that this Court concedes to the petitioners state taxpayer standing to sue in federal court to restrain public spending by the state legislature of Minnesota, should this Court proceed to decide the merits of this suit in light of cases like *Thigpen v. Roberts*, 468 U. S. 27 at 32-33 (1984), upon this record which is fully developed, including evidence offered on both sides for judicial notice of legislative fact related to the merits, detailed cross-motions for summary judgment on standing and the merits, and formal submissions on standing and the merits by both sides in the federal district court and the federal court of appeals?

6. In light of *Adkins v. Children's Hospital*, 262 U. S. 525 (1923); *Reed v. Reed*, 404 U. S. 71 (1971); *Frontiero v. Richardson*, 411 U. S. 677 (1973); *Taylor v. Louisiana*, 419 U. S. 522 (1975); *Weinberger v. Wiesenfeld*, 420 U. S. 636 (1975); *Stanton v. Stanton*, 421 U. S. 7 (1975); *Craig v. Boren*, 429 U. S. 190 (1976); *Califano v. Goldfarb*, 430 U. S. 199 (1977); *Orr v. Orr*, 440 U. S. 268 (1979); *Califano v. Westcott*, 443 U. S. 76 (1979); *Wengler v. Druggists*, 446 U. S. 142 (1980); *Mississippi University for Women v. Hogan*, 458 U. S. 718 (1982), and *United States v. Virginia*, 518 U. S. 515 (1996), is the Minnesota Battered Women's Act, which appropriates public funds to assist women who have suffered domestic violence, yet broadly excludes all assistance to men, unconstitutional under the equal protection clause of Amendment XIV, buttressed by Amendment XIX of the United States Constitution, particularly in view of the fact that domestic violence is a social problem significantly caused and experienced by both men and women?

TABLE OF CONTENTS

Question Presented for Review i

Table of Authorities iv

Jurisdiction 1

Constitutional Provisions 1

Statement of the Case 2

Reasons why the Writ should be Granted 5

1. The Substantive Merits 5
2. The Problem of Standing 8
3. State Taxpayer Standing 9
4. Federal Taxpayer Standing Distinguished 11
5. The 8th Circuit Approach 12
6. Adapting *Flast* to State Taxpayer Standing 13
7. Equal Protection and the *Flast* Test 15
8. A Writ for the Merits as well as Standing 17

Conclusion 18

Appendix A, Opinion of the United States Court of Appeals for the Eighth Circuit, September 11, 2002 ..... A1-A8

Appendix B, Opinion of the United States District Court for Minnesota, August 13, 2001 ..... B1-B10

Appendix C, House File No. 699, 82nd Legislature of Minnesota, Section 25, Subd. 2(c) and (d) C1

Appendix D, Defendant-Intervenors' Motion for Summary Judgment D1-D2

Appendix E, Defendants' Motion for Summary Judgment E1-E2

Appendix F, Plaintiffs' Motion for Summary Judgment F1-F10

Appendix G, Sections 611A.31-611A.375 of Minnesota Statutes 2000, 2002 ..... G1-G13

TABLE OF AUTHORITIES

FEDERAL CASES:

Adkins v. Children's Hospital,
261 U. S. 525 (1923) ..... ii, 7

Bolling v. Sharpe,
347 U. S. 497 (1954) ..... i, 16, 17

Brown v. Board of Education,
347 U. S. 483 (1954) ..... i, 16, 17

Califano v. Westcott,
443 U. S. 76 (1979) ..... ii, 16, 17

Califano v. Goldfarb,
430 U. S. 199 (1977) ..... ii, 17

Craig v. Boren,
429 U. S. 190 (1976) ..... ii, 17

Crampton v. Zabriski,
101 U. S. 601 (1880) ..... *passim*

Flast v. Cohen,
392 U. S. 83 (1968) ..... *passim*

Frontiero v. Richardson,
411 U. S. 677 (1973) ..... *passim*

Frothingham v. Massachusetts,
262 U. S. 447 (1923) 11, 12

Mississippi University for Women v. Hogan,
458 U. S. 718 (1982) ..... ii, 16, 17

Muskrat v. United States,
219 U. S. 346 (1911) 8

Orr v. Orr,
440 U. S. 268 (1979) ii

Plessy v. Ferguson,
163 U. S. 537 (1897) ..... i, 16, 17

Reed v. Reed,
404 U. S. 71 (1971) ii

Stanton v. Stanton,
421 U. S. 7 (1975) ii

Tarsney v. O'Keefe,
225 F. 3d 929 (8 C.r. 2000) ..... i, 12, 13, 14

Taylor v. Louisiana,
419 U. S. 522 (1975) ii

Thigpen v. Roberts,
468 U. S. 27 (1984) ..... ii, 17

United States v. Virginia,
518 U. S. 515 (1996) ..... ii, 7, 16, 17

Valley Forge Christian College v. Americans United for Separation of Church and State,
454 U. S. 464 (1982) 12

Weinberger v. Wiesenfeld,
420 U. S. 636 (1975) ..... ii, 16, 17

Wengler v. Druggists,
446 U. S. 142 (1980) ..... ii, 16, 17

STATE CASES:

Caruthers v. Harnett,
2 S. W. 523 (Tex. 1886) 11

Doe v. Gomez,
542 N. W. 2d 17 (Minn. 1995) 13

Minnesota Civil Liberites Union v. State,
224 N. W. 2d 344 (Minn. 1974) 11

Philips v. Brandt,
43 N. W. 2d 285 (Minn. 1953) 11

MISCELLANEOUS:

Attorney General of Ontario v. Attorney General of Canada,
[1912] A. C. 571 8

Blackstone, *Commentaries on the Laws of England,*
Christian ed. 1765 10

Carrado et al., *Aggresion in British Heterosexual Relationships, a descriptive analysis,*
22 Aggressive Behavior 401 (1996) 6

Davis, *Judicial Notice,*
55 Columbia L. Rev. 945 (1955) 7

Ferrand, *Records of the Federal Convention of 1787,*
Yale University Press, 2nd ed. 1937 9

Steimetz, *The Battered Husband Syndrome,*
2 Victimology 499 (1977) 6

Straus, "Physical Assaults by Wives, A Major Social Problem," in Gelles & Loseke, *Current Controversies in Domestic Violence,*
Sage Publications, 1993 6

Traupman, *New English & Latin Dictionary,*
Bantam Books, New York, 1966 10

Come now your petitioners, and they show this honorable Court the following particulars in support of their prayer for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit, to wit:

JURISDICTION

Your petitioners seek reversal of a judgment against them, entered by the United States Court of Appeals for the Eighth Circuit on September 11, 2002, the same reproduced in Appendix A hereof, soon to be but not yet reported as *Booth v. Hvass,* 302 F.3d 849.

Jurisdiction to review this cause on writ of certiorari is premised on 28 United States Code, Section 1254(1), insofar as it permits this Court to review any case pending before or decided by a federal court of appeals.

Jurisdiction to review this cause on writ of certiorari is also premised on 28 United States Code, Section 2101(c), and on Rule 13 of the Rules of the United States Supreme Court, insofar as such statute and rule permit a petition for such review within 90 days of the judgment of the court for which review is sought.

CONSTITUTIONAL PROVISIONS

Three provisions of the United States Constitution are here involved, to wit: -- As to the question of standing, the first clause of Article III, Section 2, insofar as it says, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States," etc., -- and as to the merits, Amendment XIV insofar as it provides in the first section, "No State shall . . . deny any person within its jurisdiction the equal protection of the laws." And Amendment XIX, insofar as it provides, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

STATEMENT OF THE CASE

This suit was commenced on June 17, 2000 in the United States District Court for Minnesota by your petitioners as male residents, citizens, and taxpayers of the State of Minnesota against commissioners or chief executive officers in charge of four departments of the state government of Minnesota pursuant to 28 United States Code, Sections 1331 and 1343, premising their right of action upon under 42 United States Code, Section 1983 with a view to enforcing the equal protection clause of Amendment XIV, buttressed by Amendment XIX of the United States Constitution. Your petitioners seek a declaratory judgment that the Minnesota Battered Women's Act is unconstitutional, and an injunction prohibiting public spending thereunder. The Act originated in Chapter 428 of Minnesota Laws of 1977, and has since been amended on many occasions up through Sections 10-26 in Article 2 of Chapter 445 of Minnesota Laws of 2000. The Act is now codified as Sections 611A.31-611A.375 of Minnesota Statutes 2000 and 2002, which is described in some detail in Appendix F, pp. F2 - F3, reprinted verbatim in Appendix G, and implemented by Reorganization Order No. 182 which transfers principal responsibility to the commissioner of public safety.

Three intervenors were allowed as defendants by the district court.

The amended complaint alleges that your petitioners as state taxpayers have standing to sue in federal court for the relief sought, and that Minnesota Battered Women's Act is unconstitutional. Attached to the amended complaint, and considerably buttressed with exhibits on this record (e. g., the scholarly investigations cited and discussed in Appendix F, pp. F8 - F11) is a long bibliography of peer-reviewed articles in learned books and journals, tendered for judicial notice of legislative fact, the existence and content of which are not contested on this record, showing on the basis of massive empirical data analyzed by some 200 or more university-trained scholars in the United States, Canada, and Europe

over the past quarter century that, globally speaking, women initiate and carry out domestic assaults against their partners during courting and marriage about as often as men do. While the data can be broken down to show that proportionately more men or more women commit or suffer one or another kind of domestic violence, a significant number of men and women are included as assailants or targets in every class of domestic violence. Moreover, these studies indicate that physical injury is only a very minor part of the overall harm done by domestic violence, and that other antagonisms between cohabiting men and women may well cause more serious harm.

The answers of the respondents denied standing of the petitioners to sue in federal court and affirmed the constitutionality of the Act.

The Act serves as a conduit for the spending of public funds periodically appropriated by the Minnesota Legislature to aid women who have been or claim to have been physically assaulted by their husbands or male companions, and is not a regulatory measure except insofar as it defines the objects and purposes of the public money spent. During the proceedings in the district court, the respondents attempted to claim that the Act did not discriminate against men on account of sex, even though (1) the legislative history shows none other than a most deliberate legislative intent to discriminate against men as explained in Appendix F, pp. F6 - F7, (2) the official codification of the Act is entitled "BATTERED WOMEN" as appears in Appendix G, p. G1, (3) the beneficiaries of public spending are defined as women with no mention of men, (4) the nondiscrimination clause in the Act prohibits discrimination against every imaginable class of women but not does not prohibit denial of benefits to men, (5) all grants funneled through the Act are designated for women with no mention of men, and (6) affidavits of state bureaucrats conceded inability to locate any public spending for men under the Act. While this suit was pending before the

district court, (7) the state legislature of Minnesota considered further appropriations under the Act. House File No. 699, 82nd Legislature, Section 25, Subd 2(c) and (d), reprinted in Appendix C, proposed another $7,500,000 for women, then proposed for the first time ever a special and distinct appropriation for men in the token amount of $100,000. Nothing ever came of that bill which nevertheless shows that the state legislature of Minnesota interprets the Act as most recently amended for what it plainly says, viz., that public funds may be spent for women, but not for men. The attorney general of Minnesota has stipulated that, in the fiscal year 1999, about $23,000,000 in state funds were spent under the Act. In the fiscal year 2000, about $27,000,000 in state funds were spent under the Act as appears in Appendix F, p. F3. This suit does not challenge any appropriation of federal funds by Congress subject to conditions which are or may be met under the Act as appears in Appendix F, p. F4. The standing of your petitioners to sue in federal court, therefore, is premised on their status as state taxpayers, not on their status as federal taxpayers, and seeks relief against state spending only.

Your petitioners and the respondents filed cross-motions for summary judgment, including elaborate exhibits and affidavits, and addressing all issues, both standing and the merits, and setting forth the foregoing particulars, as indicated in Appendices D, E, and F. All issues, both standing and the merits, were fully argued on both sides in elaborate submissions upon uncontested facts and a clean record.

On August 13, 2001, after full dress argument and considerate treatment, the district court held that your petitioners lack standing, and dismissed the amended complaint, as appears in Appendix B.

On September 4, 2001, your petitioners appealed.

On September 11, 2002, again after full dress argument and considerate treatment, the court of appeals held that

your petitioners lack standing, and affirmed the judgment of the district court, as appears in Appendix A.

REASONS WHY THE WRIT SHOULD BE GRANTED

1. *The Substantive Merits*: Whenever a substantive constitutional issue becomes particularly delicate and sensitive, the question of standing has a tendency to appear in the case. Nothing could be more delicate and sensitive than the question of domestic violence, which, like alcoholism, is a most awkward feature of human existence. When alcoholism became a public concern about fifty years ago, those responsible saw the need for healing, and led a great movement which has since saved lives, careers, marriages, and families, while advancing the interests of civilization generally. We have not had the same edifying experience with domestic violence, which, from the beginning, has been exploited by demagogues who have since caused immense political mischief and social damage. The truth is told by "la grande dame" of the movement to recognize domestic violence as a social problem. Erin Pizzey, a British subject, established the world's first battered women's center in London. We did not contact her, she contacted us (from her e-mail address pizzey@pizzey1.co.uk on March 26, 2001), and encouraged our efforts to strike down the Minnesota Battered Women's Act. Her words speak volumes:

> "I was aware from the beginning that domestic violence was not a gender issue. The whole subject of domestic violence was hi-jacked by the feminist movement, looking for a just cause and also for funding. This is the first time I have seen any action taken that might, at last, make some real changes. You have my prayers and support."

Madame Pizzey is internationally famous, and has lectured extensively on domestic violence. Her views are based on long experience. She once summed up the problem very well:

> "There are as many violent women as men, but there's a lot of money in hating men, particularly in the United States -- millions of dollars. It isn't a politically good idea to threaten the huge budgets for women's refuges by saying that some of the women who go there aren't total victims. Anyway, the activists aren't there to help women come to terms with what's happening in their lives. They're there to fund their budgets, their conferences, their traveling abroad, and their statements against men." -- Quoted by Philip Cook, *Abused Men: the Hidden Side of Domestic Violence*, Praeger, West Port, Conn., 1997, p. 122.

What Madame Pizzey says is now supported by a large corpus of scholarship which is displayed upon this record. The pioneering work in this field was done by university women with doctorates who sensed that the orchestrated uproar over domestic violence was not entirely an honest cry for justice, and so they undertook systematic review of empirical data to find out the truth. Dr. Suzanne Steinmetz broke the ice in the United States with her article, *The Battered Husband Syndrome*, 2 Victimology 499 (1977). Dr. Michelle Carrado and her colleagues showed, if anything, that women may commit more acts of domestic violence than men, as appears in *Aggression in British Heterosexual Relationships, a Descriptive Analysis*, 22 Aggressive Behavior 401 (1996). The general consensus among most honest and responsible investigators is stated by Dr. Murray Straus in "Physical Assaults by Wives, A Major Social Problem," in Gelles & Loseke, *Current Controversies in Domestic Violence*, Sage Publications, Newbury Park, California, 1993, pp. 67-87 (1993): considering the problem globally, it appears that women initiate and carry out physical assaults against their partners about as often as men do. Brushing aside quibbles and details, the basic conclusion is that DOMESITC VIOLENCE, NO LESS THAN ALCOHOLISM, IS A SOCIAL PROBLEM SHARED BY MEN AND WOMEN ALIKE. Such

legislative fact is subject to judicial notice, particularly with respect to questions of whether sex discrimination against men or women is or is not constitutionally permissible. See, e. g., the observations of Justice Brennan in *Craig v. Boren*, 429 U. S. 190 at 199-204 at 209 fn. 22 (1976). Cf. Davis, *Judicial Notice*, 55 Columbia L. Rev. 945 at 952-959 (1955).

Amendment XIX has a special impact upon the guarantee of equal protection in the United States Constitution, as appears in the opinion of Justice Sutherland, in *Adkins v. Children's Hospital*, 261 U. S. 525 at 552-553 (1923), and the opinion of Justice Brennan in *Frontiero v. Richardson*, 411 U. S. 677 at 685 (1973). And the consequence of this special impact of Amendment XIX, which can be ascertained from a conservative tradition-bound view of fundamental law, has been an impressive body of judicial decisions (cited in relation to question 6, on page ii, ante), and the thrust of these decisions was described by Justice Ginsberg in part IV of her opinion in *United States v. Virginia*, 515 U. S. 518 (1996): legislation discriminating against men or women on account of sex is subject to a "strong presumption" that it is unconstitutional, and such presumption can be rebutted only by an "extremely persuasive justification," i.e., a justification which is substantially related to important government objectives, is genuine and well-founded in fact, is not invented post hoc in response to litigation, does not rely on overbroad generalities concerning differences between men and women, and is not based on fixed notions about characteristics of men and women.

If the state legislature of Minnesota offered men, but not women help in dealing with alcoholic spouses, the public spending would obviously be unconstitutional under the equal protection clause of Amendment XIV, buttressed by Amendment XIX. There is no sense in trying to talk around the problem, for the same kind of radical fault also renders the Minnesota Battered Women's Act obviously unconstitutional.

Nothing offered on this record to justify the Act even remotely constitutes an extremely persuasive justification to overcome the strong presumption that it is unconstitutional. It follows that the Act is a legal nullity.

2. *The Problem of Standing*: The question is, not so much whether the Act is unconstitutional, but how this problem may be remedied. Lobbying before the state legislature of Minnesota is an exercise in futility, because the subject of female-instigated and male-targeted domestic violence is commonly the butt of political jokes in bad taste.

Hence, the problem must be addressed by litigation, preferably before the federal judiciary, and the best approach appears to be a state taxpayers suit to restrain unlawful expenditure of state funds as your petitioners have attempted here. But now your petitioners are saddled with a thorny problem of standing which so far as kept them from securing an adjudication on the merits.

Your petitioners sue as state taxpayers in federal court to restrain public spending of state funds on the basis of the equal protection clause of Amendment XIV, buttressed by Amendment XIX of the United States Constitution. Do they have standing under these circumstances? Such is the first question which your petitioners ask this Court to decide on writ of certiorari.

It has long been a question whether standing is a matter of judicial restraint or constitutional principle.

Your petitioners believe that standing is based on constitutional principle, specifically of subject matter jurisdiction, because the federal judiciary may entertain only cases and controversies described in the first and second clauses of Article III, Section 2 of the United States Constitution, as distinguished from advisory opinions which in any event may be sought, where allowed, only at the request of public authority. See, e. g., *Muskrat v. United States*, 219 U. S. 346 (1911). Cf. *Attorney General of Ontario v. Attorney General of Canada*, [1912] A. C. 571.

The debates of the Philadelphia Convention support the view that the federal judiciary may not touch all constitutional questions, and that its jurisdiction is limited to those issues which are strictly judicial, -- i. e., issues which can be raised only within traditional suits at law, in equity, and in admiralty. It so appears in Ferrand (ed.), *Records of the Federal Convention of 1787*, Yale University Press, 2nd ed. 1937, Vol. 2, pp. 186, 428, and 430 (Madison's Notes, August 6 and 27, 1787).

The question of standing of taxpayers to sue in federal court for relief against public spending has been judicially treated as a special problem in and of itself. Standing to challenge public spending ought not be confused with standing to challenge legislative regulation, because the problems in each area have distinctive features, and the judicial generalities expressed in these two kinds of cases are not always congruent. This is a case is about standing to challenge the *power of public spending*, not standing to challenge the power of legislative regulation.

A writ of certiorari is needed here to clarify the law of standing under several major decisions of this Court which have been disregarded, misunderstood, or contradicted by the 8th Circuit in this case. *See Rule 10(c) of the Rules of the Supreme Court of the United States.*

3. *State Taxpayer Standing*: Your petitioners urge that they have standing as state taxpayers to sue in federal court for relief against state spending under *Crampton v. Zabriski*, 101 U. S. 601 at 609 (1880), which remains good law today, and has never been overruled or modified by this Court.

In *Crampton* it was held, largely on the authority of an eminent treatise on municipal corporations, that a resident taxpayer of a subdivision of a State -- in that case a county -- has standing to sue in federal court to sue for an injunction to restrain public spending by such subdivision on any basis which might fall within federal jurisdiction. In this case your

petitioners have sued as state taxpayers to restrain four subdivisions, i.e., four departments of the State of Minnesota. Jurisdiction here is based on a federal question. But under *Crampton*, it does not matter *which* federal question is raised, so long as the suit is brought by *state taxpayers* before the federal judiciary to restrain *state spending*, and is not brought to restrain public spending by Congress.

In principle it should not matter whether the subdivision is a town, village, city, county, or department. Nevertheless in this case, the 8th Circuit stated (Appendix A, p. A7), "In our view, departments of a State are more analogous to the State itself than they are to counties." In other words, the 8th Circuit read *Crampton* has allowing state taxpayer standing only where the suit is limited to "municipal" corporations strictly so-called. That reading cannot be correct, because the English adjective derives from the Latin noun "municipium" which means a free town, village, or city. See, e. g., Traupman, *New English & Latin Dictionary*, Bantam Books, New York, 1966, p. 189. The strict definition suggested by the 8th Circuit excludes a county, yet a county was included in the rule stated in *Crampton*.

Does *Crampton* allow state taxpayer suits only against local units of state government as suggested by the 8th Circuit? Your petitioners do not think so, first because the adjective "municipal" can refer to a city as distinguished from a state, or alternatively to any self-governing community, state, or nation as distinguished from international laws or institutions. See, e.g., Blackstone, *Commentaries on the Laws of England*, Christian ed. 1765, Bk. I, p. 44. Secondly, because the opinion in *Crampton* clearly indicates that the rule there expounded applies equally to any and all local units of government, or to departments of a State, or even the State itself, -- i.e., "municipal" in the *broad* sense meant by Blackstone.

For in *Crampton*, 101 U. S. at 109, it was said, "Certainly, in the absence of legislation restricting the right to interfere in such cases to public offices of *the State* or county, there would

seem to be no substantial reason why a bill by individual taxpayers should not be entertained," etc. [Emphasis added]. In other words, in *Crampton* this Court described the rule of state taxpayer standing in federal court by reference to *local or state* government. So the distinction drawn by the 8th Circuit has no basis in *Crampton* itself.

Moreover, the evident purpose of the rule on state taxpayer standing in *Crampton* was to capture for the federal judiciary the general rule of state taxpayer standing then prevailing in most or all state courts throughout the country. At that time, the law throughout the country was stated in cases like *Caruthers v. Harnett*, 2 S. W. 523 at 525 (Tex. 1886), where it was said that in a suit in state court to restrain the expenditure of public funds on a public venture by the state government of a subdivision thereof, "It will generally suffice that the persons seeking the injunction are residents and taxpayers." Certainly in Minnesota, the law has long been established that a state resident and taxpayer has standing to bring suit in state court for injunction to restrain public spending authorized by the legislative power of *any unit or level* of state government. See, e. g., *Philips v. Brandt*, 43 N. W. 2d 285 (Minn. 1950), and *Minnesota Civil Liberties Union v. State*, 224 N. W. 2d 344 (Minn. 1974). We think that *Crampton* allows identical state taxpayer standing *in federal court* so long as some proper basis of federal jurisdiction can be invoked.

4. *Federal Taxpayer Standing Distinguished*: Your petitioners well understand that a very different rule was established for federal taxpayer standing in *Frothingham v. Massachusetts*, 262 U. S. 447 (1923), where it was held that no federal taxpayer has standing to sue in federal court for relief against a public spending by Congress. Yet in *Frothingham*, 262 U. S. at 486-487, this Court cited *Crampton* with approval as still good law, thereby drawing a sharp contrast with state taxpayer standing.

For many years it was thought that *Frothingham* went too far, and so eventually the rule was relaxed somewhat by

Chief Justice Warren speaking for the majority in *Flast v. Cohen*, 392 U. S. 83 (1968), so as to allow federal taxpayers standing to sue in federal court for relief against exercise of the power of Congress to tax and spend, but only in some circumstances, depending on *which provision* of the United States Constitution is invoked. Even so, in *Flast*, 392 U. S. at 93, this Court again cited *Crampton* with approval as still good law, thereby continuing the contrast with state taxpayer standing.

Your petitioners are comfortable with the observations of Chief Justice Rehnquist in *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U. S. 464 (1982), that the law of standing to sue in federal court is in an unsettled condition, that *Flast* is limited to federal taxpayer standing in federal court where the object is to remedy unlawful exercise of the power of taxation and spending by Congress, and that, under the law as it now stands, there is no federal taxpayer standing to sue in federal court under the disposition-of-property clause of the United States Constitution.

Your petitioners do not seek to ignite a judicial revolution on the law of standing, overturning past precedents, etc. It might be a good idea to revise our whole jurisprudence on standing to sue in federal court on a comprehensive review of fundamental principles. But your petitioners have no such project in mind here: they seek here to secure a *clarification of existing decisions of this Court.*

5. *The 8th Circuit Approach*: With these considerations in mind, your petitioners call attention to the decision in *Tarsney v. O'Keefe*, 225 F. 3d 929 at 932-939, subject to dissent at 939-942 (8 Cir. 2000), cert. den. 121 S. Ct. 1364 (U. S. 2001). In *Tarsney* the plaintiffs sued in federal court as state taxpayers on the basis of the free exercise clause in the United States Constitution to restrain public spending for abortions such as had been mandated by the state judiciary under the state constitution in *Doe v. Gomez*, 542 N. W. 2d 17 (Minn. 1995). The majority in *Tarsney* held that state

taxpayer standing in federal court to restrain state spending is subject to exactly the same test as is set forth in *Flast* for federal taxpayer standing in federal court to restrain federal spending, and that the free exercise clause is not a provision which meets the test in *Flast*.

As your petitioners see it, the main trouble with *Tarsney* is that *Crampton* is a venerable and relevant precedent set by this Court, yet was not cited and discussed either by the majority or in the dissent. As far as your petitioners can determine, counsel did not cite or argue *Crampton* in *Tarsney*. The use of *Crampton* in this case, therefore, adds a whole new dimension to the question of state taxpayer standing not considered in *Tarsney*.

The majority in *Tarsney* adopted *Flast* which established a modified rule of federal taxpayer standing, yet confirmed *Crampton* as good law for state taxpayer standing in contrast to the more rigorous test for federal taxpayer standing. It is, therefore, impossible to understand how the majority in *Tarsney* could have adopted *Flast* as a test of *state taxpayer standing* in federal court.

The meaning of *Crampton* in relation to *Flast* should be addressed by this Court on writ of certiorari to avoid confusion in coming years, and thereby to promote more uniform and efficient administration of justice before the federal judiciary throughout the country.

6. *Adapting Flast to State Taxpayer Standing*: While they disagree with the notion, your petitioners are willing to allow for the sake of discussion that the majority was right in *Tarsney*, and that the rule for state taxpayer standing in federal could should be identical to the rule for federal taxpayer standing in federal court as stated in *Flast*.

In making this assumption for the sake of discussion, your petitioners are naturally concerned about precisely what kind of provisions in the United States Constitution will satisfy the test for standing established in *Flast*. A closer examination of *Flast* is, therefore, in order:

Chief Justice Warren held in *Flast*, 392 U. S. at 102-103, that federal taxpayer standing in federal court for relief against an act of Congress requires (1) federal taxpayer status of the plaintiffs, (2) in a suit challenging a specific exercise of the taxing and spending power of Congress, (3) where, in the case of a challenge to the spending power, the statute attacked does not merely provide for an incidental expenditure of federal funds in the administration of an essentially regulatory statute, but primarily directs the spending of federal funds, and also (4) that "the enactment challenged exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress."

Chief Justice Warren further held in *Flast*, 392 U. S. at 103-104, (5) that the establishment clause of the United States Constitution is a specific limitation on the taxing and spending power of Congress.

Chief Justice Warren observed in *Flast*, 392 U. S. at 104-105, (6) that substantive due process and the general reservation of powers to the several States are not specific limitations on the taxing and spending power of Congress.

Chief Justice Warren also cautioned in *Flast*, 392 U. S. at 102, (7) that the free exercise clause of the United States Constitution may not be a specific limitation on the taxing and spending power of Congress, thus anticipating by thirty-three years the 8th Circuit in *Tarsney*.

The question then remains whether any provision in the United States Constitution *other than the establishment clause* may be a specific limitation on the taxing and spending power of Congress.

Chief Justice Warren addressed this question affirmatively in unequivocal language in *Flast*, 392 U. S. at 105-106, as follows:

"We have noted that the Establishment Clause of the First Amendment does specifically limit the taxing and spending power conferred by Article I, Section 8. Whether the Constitution contains other specific limitations can be determined only in the context of future cases. However, *whenever such specific limitations are found, we believe a taxpayer will have a clear stake as a taxpayer in assuring that they are not breached* by Congress. Consequently, we hold that a taxpayer will have standing consistent with Article III to invoke federal judicial power when he alleges that the congressional action under the taxing and spending cause is *in derogation of those constitutional provisions which operate to restrict the exercise of the taxing and spending power.* The taxpayer's allegation in such cases would be that his tax money is being extracted and spent in violation of *specific constitutional protections against such abuse of legislative power.*" [Emphasis added]

Assuming that this test can be adapted to state taxpayer standing as held by the majority in *Tarsney,* the key question in this case will be whether the *guarantee of equal protection* in the United States Constitution, at least as it relates to sex discrimination, has been found by this Court to "restrict the exercise of the taxing and spending power."

7. *Equal Protection and the Flast Test*: The answer to that question was given unequivocally in the affirmative by the 8th Circuit in this case (Appendix A, p. A7-A8), where, on the prompting of your petitioners, they cited *Frontiero v. Richardson,* 411 U. S. 677 (1973), and correctly said of the holding in the case that *the guarantee of equal protection bars "sex discrimination in public spending for benefits to military personnel."* [Emphasis added] It is not possible to find a clearer legal determination that equal protection is a specific limitation of the spending power, at least as equal protection relates to sex discrimination.

Your petitioners cited before the 8th Circuit several other cases in which equal protection, particularly as buttressed by Amendments XV or XIX, operates to "restrict the exercise of the taxing and spending power," to wit: *Plessy v. Ferguson*, 163 U. S. 537 (1896), where equal protection was found to limit race discrimination in public spending for public transportation; *Brown v. Board of Education*, 347 U. S. 483 (1954), where equal protection was found to limit race discrimination in public spending for public education; *Bolling v. Sharpe*, 347 U. S. 497 (1954), where equal protection was found to limit race discrimination in public spending for public education; *Mississippi University for Women v. Hogan*, 458 U. S. 718 (1982), where equal protection was found to limit sex discrimination in public spending for public education; and *United States v. Virginia*, 515 U. S. 518 (1996), where equal protection was found to limit sex discrimination in public spending for public education. Your petitioners here add *Weinberger v. Wiesenfeld*, 420 U. S. 636 (1975), *Califano v. Goldfarb*, 430 U. S. 199 (1977), and *Califano v. Westcott*, 443 U. S. 76 (1979), where equal protection was found to limit sex discrimination in public spending for social security benefits, and *Wengler v. Druggists*, 446 U. S. 142 (1980), where equal protection was found to limit sex discrimination in public spending for worker death benefits. No doubt other examples are available, but these suffice, for it is not possible to imagine clearer determinations that equal protection is a specific limitation on the spending power, at least as equal protection relates to discrimination based on race, sex, or some other characteristic meriting heightened scrutiny by this Court.

The cases cited before the 8th Circuit should have ended the discussion, establishing that, even under the test of *Flast*, your petitioners have standing as state taxpayers in federal court to challenge state spending.

The 8th Circuit nevertheless denied standing to your petitioners, because *Frontiero* and other such cases are not cases in which standing was litigated. The quick answer is that, under *Flast*, the test is not a clause, provision, or

guarantee found to be a specific limitation on the taxing and spending power where the issue of standing was litigated. It is enough, as Chief Justice Warren said, that the clause, provision, guarantee has been "found" quite simply in whatever setting to "restrict the taxing and spending power." And this Court has "found" on at least ten occasions -- *Plessy, Brown, Bolling, Frontiero, Wiesenfeld, Goldfarb, Wescott, Wengler, Hogan,* and *Virginia* -- that equal protection does "restrict the taxing and spending power." Quod erat demonstrandum!

8. *A Writ for the Merits as well as Standing*: In the usual case on standing before this Court, it is either held that standing does not exist and the litigation ends, or it is held that standing exists and the case is remanded. But there are exceptions to every rule, and this case is an exception to the rule. Your petitioners urge that, upon certiorari, this Court should find standing, then decide the merits by declaratory judgment, then remand for administrative follow through, -- e. g., issuing an appropriate injunction, granting statutory fees, etc.

Your petitioners urge this approach, because it is lawful upon this record, and it will promote judicial economy.

In *Thigpen v. Roberts,* 468 U. S. 27 at 32-33 (1984), this Court decided the merits of a question on which the lower courts had not passed judgment. It may be deduced from *Thigpen* and like cases when such decision by this Court is appropriate. Whether affirming or reversing, this Court may dispose of an issue not addressed in the lower court where (1) the record is adequately developed for decision on the merits, (2) the merits have been fully pleaded and argued in the court of first instance, (3) remand is not necessary to improve the record for decision on the merits, and (4) the issue can be decided upon straightforward application of existing precedents.

Your petitioners submit that all these conditions have been met here, and, accordingly pray for a writ of certiorari to address both standing and the merits in this case.

Your petitioners submit that the gravity of the substantive constitutional question in this case is particularly manifest. The substantive constitutional question should be reviewed by this Court, which alone has sufficient moral authority to deal with it adequately. If our society is ever to mature into a truly just, honest, functional, and natural equality between men and women, injurious legislation such as the Act here challenged must be stricken from our statute books as null and void, and replaced in due course with laws which do not reek of hypocrisy.

CONCLUSION

WHEREFORE, your petitioner respectfully prays for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit to review standing and the merits.

Dated: October 24, 2002 Respectfully submitted,

JOHN REMINGTON GRAHAM
Counsel of Record
180 Haut de la Paroisse
St-Agapit, Quebec GOS 1ZO Canada
TEL-FAX: 418-888-5049

MARK A. OLSON*
2605 East Cliff Road
Burnsville, Minnesota 55337
TELEPHONE: 952-894-8893
Counsel for the Petitioners

Of Counsel:
Joseph R. Sahid
Of the New York Bar
845 Third Avenue, 20th Floor
New York, New York 10022

*Application pending for admission to the Bar of the Supreme Court of the United States

APPENDIX A
United States Court of Appeals
For The Eighth Circuit

No. 01-3210

Scott Booth; Thomas D. Loyd; Frank Solchaga; David Witte; Scott Wyman; Charles Perrin; Knute Gladen; Michael Seeber; Terry Nyblom; Stephen Blake; Richard Doyle; William J. Hageman; Charles W. Hurd; Kyle Knutson; Jim Lovestar; Yves Nadeau; Pradeep Ramanathan, on behalf of themselves and all others similarly situated, Plaintiffs-Appellants,	*	
v.	*	Appeal from the District United States District Court for the of Minnesota.
Sheryl Ramstad Hvass, Commissioner of Corrections; Michael O'Keefe, Commissioner of Human Services; Charles R. Weaver, Jr., Commissioner of Public Safety; Christine Jax, Commissioner of Children, and Learning for the State of Minnesota, Defendants -Appellees,	*	*(Reported at 302 F.3d 849)
Domestic Abuse Project (DAP); Central Minnesota Task Force on Battered Women; Lakes Crises Center,	*	
Intervenors Defendants-Appellees.	*	

Submitted: May 13, 2002
Filed: September 11, 2002

Before WOLLMAN, BRIGHT, and GIBSON, Circuit Judges.

BRIGHT, Circuit Judge.

I. Background

On October 17, 2000, the plaintiffs-appellants, a group of male Minnesota taxpayers, filed a complaint in the United States District Court for the District of Minnesota, seeking a declaratory judgment that the Minnesota statutory scheme for dispersing state and federal funds to assist battered women and victims of domestic abuse is unconstitutional. The men alleged that the statutory scheme, Minn. Stat. §§ 611A.31-375 (2000) (hereinafter "the domestic abuse statutes"), discriminates against men in violation of the Equal Protection Clause of the United States Constitution by facilitating the expenditure of millions of dollars to assist battered women, but offering no money to assist battered males. The appellants also sought an injunction prohibiting the defendants-appellees (various Minnesota State department commissioners) from spending funds under, or promoting the objectives of, the domestic abuse statutes.[1]

[1] Appellee Charles Weaver, the Commissioner of the Department of Public Safety, administers the domestic abuse statutes through a division of the Department of Public Safety: the Center for Crime Victim Services ("the Center"). Under sections 611 A.31-.361 of the domestic abuse statutes, the Center provides grants of state and federal funds to programs that assist battered women and domestic abuse victims. Under sections 611A.37-.375, the Center also makes per diem payments to various shelters to reimburse the shelters for costs of providing their clients with food, lodging, and safety.

Three organizations that provide services and receive funding under the statutes intervened.[2] In January 2001, the appellants moved for summary judgment. The defendants - appellees and intervenors - appellees (collectively "appellees") also moved for summary judgment. The district court held oral argument on the motions. On August 13, 2001, the district court[3] issued an opinion and order denying appellants' motion for summary judgment and granting summary judgment to the appellees. The court concluded that the appellants lacked standing to pursue their claims in federal court.

Appellants timely filed a notice of appeal. On October 9, 2001, appellants filed a statement of issues that included not only the question of appellants' standing, but also the merits of the case. On October 18, the appellees moved this court to limit the issues on appeal to the appellants' standing or, in the alternative, for a prehearing conference. On October 31, an order was entered taking the motion with the case and denying the alternative request for a prehearing conference.

The appellants argue to this court that they have standing as state taxpayers[4] to sue in federal court to prevent the defendants Minnesota state officials fromspending public funds under the domestic abuse statutes because the

---

[2] Domestic Abuse Project, Central Minnesota Task Force on Battered Women, and Lakes Crises Center, all organizations that provide services to victims of domestic violence and receive funding through the domestic abuse statutes, moved to intervene in the lawsuit. Magistrate Judge Jonathan G. Lebedoff granted that motion.

[3] The Honorable Michael J. Davis, United States District Judge for the District of Minnesota.

[4] In the district court, the appellants also alleged general standing to bring their case in federal court. The district court held that the appellants failed to allege a direct injury. The appellants do not make a general standing argument on appeal.

domestic abuse statutes unlawfully discriminate against men based upon their sex.

II. Discussion

We review de novo a district court's order granting summary judgment. At the summary judgment stage, the party invoking federal court jurisdiction must set forth by affidavit and other evidence specific facts that, when accepted as true, support a claim of standing. See *Campbell v. Minneapolis Pub. Hous. Auth. ex rel. City of Minneapolis*, 168 F.3 d 1069, 1073 (8th Cir. 1999). We examine whether, after viewing all evidence in a light most favorable to the appellants and drawing all reasonable inferences in their favor, there is a genuine issue as to appellants' standing. See Fed. R. Civ. P. 56(c).

A. Prior Case Law

In *Frothingham v. Mellon*, 262 U.S. 447, 487 (1923), the Supreme Court ruled that a federal taxpayer's interest in United States treasury funds is too small and indeterminable to give that taxpayer standing to sue in federal court. The Court distinguished the municipal taxpayer, who has standing to sue to enjoin the illegal disposition of his or her taxes. Id. at 486 (citing *Crampton v. Zabriskie*, 101 U.S. 601, 609 (1880)).

In *Doremus v. Board of Educ.*, 342 U.S. 429 (1952), the Supreme Court determined that a state taxpayer did not have standing in federal court to challenge a state statute that required a Bible reading at the opening of each public school day as a violation of the Establishment Clause. The Court reasoned that the plaintiffs did not allege that the Bible reading "adds any sum whatever to the cost of conducting the school...[Or] that the Bible reading increases any tax they do pay or that as taxpayers they are, will, or possibly can be out of pocket because of it." Id. at 433.

The court continued:

> what the Court said of a federal statute as equally true when a state Act is assailed: "The party who invokes the power must be able to show not only that the statute is invalid but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

Id. at 434 (quoting *Frothingham*, 262 U.S. at 488). The taxpayer can meet this test with a "good-faith pocketbook action," which is an injury to the taxpayer's "direct and particular financial interest . . . ." Id. at 434-35.

In 1968, the Court held that a federal taxpayer has standing where: (1) the challenged statute is an exercise of the legislature's taxing and spending powers; and (2) the statute exceeds specific constitutional limitations on those powers. *Flast v. Cohen*, 392 U.S. 83, 102-03, 106 (1968). The Court further held that the Establishment Clause is a specific limit on the power of Congress to tax and spend. Id. at 104. While the Court has never declared that the Establishment Clause is the only constitutional provision that satisfies the *Flast* test for taxpayer standing, it has never found any other constitutional provision that satisfies *Flast*.

In 1989, we considered whether a taxpayer had standing to challenge a Minnesota statute allowing public high school students to take advanced courses at colleges, some of which were religiously affiliated. See *Minnesota Fed'n of Teachers v. Randall*, 891 F.2d 1354 (8th CIT. 1989). We determined that the case turned on whether Doremus required a state taxpayer to show that a State's violation of the Establishment Clause increased his or her tax burden, and concluded, in harmony with *Flast*, that *Doremus* contained no such requirement. Thus, *Randall* stands for

the proposition that state taxpayers, just like federal taxpayer plaintiffs, "must only show that there has been a disbursement of tax money in potential violation of constitutional guarantees" when bringing Establishment Clause challenges. *Randall*, 891 F.2d at 1358.

Randall did not completely adopt the *Flast* test, however. We noted that the Establishment Clause was a specific limit on the taxing and spending power of Congress, *Randall*, 891 F.2d at 1356 n.2, but did not address whether state taxpayers must satisfy a requirement that the statute exceed a specific constitutional limit on spending. We specifically mentioned that "the precise scope of *Flast* [is] uncertain." *Randall*, 891 F.2d at 1356 n.2.

More recently, in *Tarsney v. O'Keefe*, 225 F.3d 929 (8th Cir. 2000), we used the *Flast* test to determine whether a state taxpayer had standing to challenge state funding of abortions for low-income women as a violation of the Free Exercise Clause. In reaching our decision, we reasoned that, whereas expenditure of public money in the aid of religion presents a direct Establishment Clause injury to the taxpayer, no Free Exercise Clause injury arises from a government expenditure until the expenditure directly prevents the taxpayer's free exercise of religion. Id. at 936. Only at that point is the injury direct and taxpayer status irrelevant. Id. We concluded that the Free Exercise Clause was not a constitutional provision that placed a specific limitation on the government's spending.

B. Analysis

The appellants argue that *Crampton v. Zabriskie*, 101 U.S. 601 (1880), governs this case. In Cram ton, the Supreme Court held that county taxpayers have a direct interest in the application of the county's funds and they may sue for injunctive relief from illegal disposition of those funds. *Id.* at 609. The Supreme Court reaffirmed this position in *Frothingham*, 262 U.S. at 486, where it noted that municipal

taxpayers have a direct interest in the municipality's application of its moneys, and remedy by injunction is warranted. Appellants argue that under *Crampton* taxpayers may sue departments of state government (e.g., the departments of Corrections and Public Safety) because those departments, like municipalities and counties, are subdivisions of the state.

We are not convinced by this line of reasoning. In our view, departments of the state are more analogous to the state itself than they are to counties. The taxpayer base for state departments is the same as that of the state. A taxpayer's interest in the a funds allocated to a state agency is similar, perhaps identical, to the taxpayer's interest in the general state treasury. Therefore, case law addressing standing for county and municipal taxpayers is inapposite to the instant case.

Appellants also argue that they have standing under *Flast* itself, as applied in *Tarsney*. Assuming arguendo that the domestic abuse statutes are exercises of state spending power, rather than a regulatory power, appellants' argument requires that we resolve whether the Fourteenth Amendment's Equal Protection Clause is a specific constitutional limit on the spending powers of the Minnesota state government.

Appellants argue that because the Supreme Court's Equal Protection jurisprudence holds that the federal and state governments violate the Equal Protection Clause when they fund discriminatory institutions, the Equal Protection Clause can be a limitation on the taxing and spending powers of government. Appellants cite a number of Supreme Court cases to support this argument. E.g. *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982) (holding the Equal Protection Clause barred sex discrimination in admissions to state-supported nursing school); *Frontiero v. Richardson*, 411 U.S. 677 (1973) (holding that the Equal Protection Clause barred sex discrimination in public spending for benefits to

military personnel). The cases cited by the appellants are distinguishable from the instant case. Standing was not an issue in any of them; the plaintiffs all alleged direct injuries.

Appellants continue their argument by analogy, contending that because public schools receive tax dollars, a taxpayer would have standing to challenge state funding of a school that is racially or sexually discriminatory in its admissions. Under this theory, appellants believe they have shown that the Equal Protection Clause acts as a specific limit on governmental spending. Finally, under *Flast*, the appellants argue that they have taxpayer standing to challenge the alleged equal protection violation perpetrated by Minnesota under the domestic abuse statutes.

Our line of precedent leads us to the opposite conclusion. Under *Tarsney*, in order to determine whether the Equal Protection Clause is a specific limitation on the taxing and spending powers of state government, we consider whether the expenditure of public funds in a discriminatory manner violates the Equal Protection Clause. A taxpayer whose tax money is used in a discriminatory manner suffers no injury under the Equal Protection Clause unless and until an expenditure facilitates discrimination against him or her. At that point, taxpayer status is irrelevant to standing. In this case, the appellants do not have taxpayer standing to challenge state expenditures to benefit battered women under the Equal Protection Clause.

III. Conclusion

The appellants lack taxpayer standing to bring suit in federal court. We affirm the district court's grant of summary judgment of dismissal.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Scott Booth, Thomas D. Loyd, Frank Soichaga, David Witte, Scott Wyman, Charles Perrin, Warren N. Higgins Jr., Knute Gladen, Michael Seeber, Terry Nyblom, and Stephen Blake, forming the R-KIDS Legal Action Committee, Richard Doyle of the Men's Defense Association, William J. Hageman, Charles W. Hurd, Kyle Knutson, Jim Lovestar, Yves Nadeau, and Pratap Ramanathan of the National Coalition of Free Men, Twin Cities Chapter, on behalf of themselves individually, and all others similarly situated,

Plaintiffs,

Sheryl Ramstad Hvass, Commissioner of Corrections; Michael O'Keefe, Commissioner of Human Services; Charles R. Weaver Jr., Commissioner of Public Safety; and Christine Jax, Commissioner of Children, Families, and Learning for the State of Minnesota,

Defendants,

Domestic Abuse Project, Central Minnesota Task Force on Battered Women, and Lakes Crisis Center,

Defendant-Intervenors.

John Remington Graham, Mark A. Olson on behalf of Plaintiffs.

Mark B. Levinger, Jennifer K. Park, Assistants Attorney General, on behalf of Defendants.

Beverly Balos, Maury Landsman, University of Minnesota Law School Clinics, on behalf of Defendant-Intervenors.

Loretta M. Frederick, Battered Women's Justice Project, on behalf of Amici Curiae Battered Women's Justice Project and the Domestic Violence Legislative Alliance.

MEMORANDUM OPINION AND ORDER

Civil File No. 00-1672 (MJD/JGL)

This motion is before the Court on cross motions for summary judgment. In the underlying action, Plaintiffs sued officials of the State of Minnesota, seeking a declaratory judgment that the Minnesota statutes which authorize funding for emergency shelters for battered women, and support services for "battered women and domestic abuse victims and their children," violate the Equal Protection clause of the United States Constitution. For the following reasons, the Court finds that Plaintiffs do not have standing to bring this claim, and dismisses the complaint for lack of jurisdiction.

Background

Plaintiffs, male citizens and taxpayers of the State of Minnesota, allege that Defendants, four Minnesota State Commissioners, are jointly responsible for administering the state statutes which provide funding mechanisms for emergency shelters for battered women, and support services for "battered women and domestic abuse victims and their children." Minn. Stat. §§611A.31-611A.375 (2000). The Center for Crime Victim Services (the "Center"), a division of the Department of Public Safety (DPS), is directly responsible for implementing the statutes, by distributing federal and state funds to programs that assist victims of domestic abuse. Three of the programs which receive the state and federal funds in question have also joined as Defendant-Intervenors.

The federal domestic abuse grants are authorized under the Violence Against Women's Act ("VAWA"); Victims of Crime Act ('VOCA") and Family Violence Prevention Services Act ("FVPSA"). Of these federal grants, only the

VAWA grant restricts the use of the funds to women domestic abuse victims, and their children. See Bibus Aff., ¶6. The state funds for assisting victims of domestic abuse consist of per diem funds and domestic abuse grant funds. According to Defendants, the state domestic abuse grant funds that the Center provides to shelters are used for both male and female victims of domestic abuse.

The Minnesota statutes which form the basis for this complaint were originally signed into law in 1977. Minn. Stat. §§611A.31-611A.375. Contrary to Plaintiffs' assertions, there is no one law entitled the "Minnesota Battered Women's Act"; rather, there is a series of statutes which, taken as a whole, provides a mechanism for the dispersal of federal and state funds to local programs that assist victims of domestic violence, in the form of grants (the statutes are referred to collectively as "the Act"). The chapter heading of the Statute is "Battered Women and Domestic Abuse." See Minn. Session Laws 2000, Ch. 445, Article 2. Prior to the 2000 legislative session, the relevant section of the Act read:

> "Subdivision 1. (Grants Awarded.) The commissioner shall award grants to programs which provide emergency shelter services and support services to battered women and their children."

In 2000, the Act was amended to read:

> "Subdivision 1. (Grants Awarded.) The commissioner shall award grants to programs which provide emergency shelter services to battered women and support services to battered women and domestic abuse victims and their children."

Minn. Stat. §611A.32 subd. 1 (2000)(new language underlined). At other places in the Act, similar changes were made; every reference to shelter services applies them only to women, and every reference to support services applies to "battered women and domestic abuse victims."

Plaintiffs charge that this disparity is an unconstitutional violation of the Equal Protection Clause, and now move for summary judgment. Defendant and Defendant Intervenors also move for summary judgment, both on the issue of standing and on the constitutional question.

Standard

Summary judgment as a matter of law is appropriate when no genuine issue of material fact exists in the record. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-250 (1986). A fact is material if resolving disputes concerning that fact affects the outcome of the case. See *Anderson*, 477 U.S. at 248. A dispute is genuine if, based on the evidence, a reasonable jury could return a verdict for either party. See id. at 252. On a motion for summary judgment, the Court views all evidence and inferences in a light most favorable to the nonmoving party. See id., 477 U.S. at 250. The moving party carries the burden to demonstrate the absence of any genuine issue of material fact. Fed. R. Civ. P. 56(b); *Celotex*, 477 U.S. at 323.

Analysis

The threshold issue to be addressed is whether the plaintiffs have standing to have this Court decide the merits of the case. See *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Federal courts are limited in their jurisdiction; under the Constitution, only claims involving a "case" or "controversy" may be considered. U.S.Const., art. III, §2. Even when a controversy is alleged, the complaining party must meet both the constitutional and "prudential" requirements of standing. See *Allen v. Wright*, 468 U.S. 737, 751 (1984).

First, as an "irreducible constitutional minimum," the party bringing the claim must be able to demonstrate that he has suffered an "injury in fact." *Luian v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). To demonstrate "injury in fact,"

the plaintiff "must show that he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95,101-102 (1983) (citations omitted).

In addition to alleging a direct injury, plaintiffs must show that the injury was personally suffered as a consequence of the alleged constitutional error, other than a psychological consequence produced by observation of conduct with which plaintiffs disagree. See *Valley Forge Christian College v. Americans United for Church and State*, 454 U.S. 464, 485-86 (1982). "Generalized grievances" shared by a large class of citizens are not normally considered palpable injury sufficient to confer standing. See *Warth*, 422 U.S. at 499; *Valley Forge*, 454 U.S. 486 ("[S]tanding is not measured by the intensity of the litigant's interest or the fervor of his advocacy"). Once the injury has been established, the plaintiff must also show that it was caused by the defendant's conduct, and that the injury is redressable by a favorable decision. See *Bennett v. Sear*, 520 U.S. 154, 162 (1997).

The party invoking federal jurisdiction bears the burden of establishing these constitutional elements of standing. See *Warth*, 422 U.S. at 508; *Lujan*, 504 U.S. at 561. At the summary judgment stage, Plaintiffs must set forth, by affidavit or other evidence, specific facts concerning the injury which for purposes of the summary judgment motion will be taken to be true. Fed. R. Civ. P. 56(e). When the suit is one, such as this, which challenges the legality of government action, and does not involve the plaintiff himself as an object of the action, then the plaintiffs burden becomes ""substantially more difficult" to establish." *Lujan*, 504 U.S. at 561, citing *Allen*, 468 U.S. at 758.

In this case, Plaintiffs allege that the constitutional violation is the unequal provision of funding for shelter services to male and female victims of domestic violence. No

Plaintiff has shown that he was unable to obtain shelter services because he was male; in fact, not one of the Plaintiffs alleges that he sought, or wished to seek, shelter services at all. No Plaintiff has been a respondent in any order for protection, nor have any been convicted in any civil or criminal proceedings. Plaintiffs instead claim that their injury is the "prejudicial atmosphere [that] has been created in the state courts of Minnesota against men as a class of which the plaintiffs are members." Pls.' Answers to Interrogs. at 11.

This type of indirect injury is not enough to confer standing. See *Allen*, 468 U.S. at 740 (holding that stigmatizing injury caused by racial discrimination is not "injury in fact" where plaintiffs were not personally denied equal treatment). Having have failed to demonstrate, much less allege, that they suffered a direct "injury in fact" as a result of Defendants' conduct, Plaintiffs have failed to meet the basic constitutional requirements for standing.

In addition to these constitutional requirements, the Supreme Court has imposed "prudential" requirements for the courts to consider. See *Allen*, 468 U.S. at 751. Among these is a well-established rule against taxpayer standing. See *Frothingham v. Mellon*, 262 U.S. 447, 487 (1923). This limitation is deemed necessary because a "taxpayer's "interest in the moneys of the Treasury ...is... so remote, fluctuating and uncertain, that no basis is afforded for [judicial intervention]." *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 613(1989), citing *Frothingham*, 262 U.S. at 487.

The Supreme Court, however, has carved out a narrow exception to the "no taxpayer standing" rule. In *Flast v. Cohen*, the Court held that a federal taxpayer may have standing if he can show 1) that the challenged congressional action is an exercise of congressional power under the taxing and spending clause of Art.l, §8 of the Constitution; and 2) that the challenged enactment exceeds specific constitutional limitations on the taxing and spending power. 392 U.S. 83,106 (1968). The *Flast* Court recognized taxpayer standing

to raise Establishment Clause claims because that clause specifically limits the taxing and spending power conferred by Article I. The Court left open, however, the question of whether there could ever be taxpayer standing to raise other types of claims. Id. at 104.

In a recent decision, the Eighth Circuit considered this question in connection with a Minnesota taxpayer challenge to state funding for abortions for low-income women. See *Tarsnev v. O'Keefe*, 225 F.3d 929 (2000), *cert. denied*, 121 S.Ct.1364 (2001). The plaintiffs asserted that the use of state money for abortions infringed upon the free exercise of their religion. They argued that the *Flast* exception to the no-taxpayer rule should be expanded to include claims based on the Free Exercise Clause.

In affirming the lower court's dismissal of the case, the Eighth Circuit noted that both the Supreme Court and the Appellate courts have consistently reaffirmed the extremely limited application of the *Flast* exception to Establishment Clause claims. See Id. at 937, citing, *e.g.*, *Bowen v. Kendrick*, 487 U.S. 589, 618-620 (1988); *Valley Forge*, 454 U.S. at 476-82; *United States v. Richardson*, 418 U.S.166,176-80 (1974); *Minnesota Fed. of Teachers v. Randall*, 891 F.2d 1354, 1358 (8th Cir.1989); *Colorado Taxpayers Union, Inc., v. Romer*, 963 F.2d 1394, 1399 (10th Cir.1992), *cert. denied*, 507 U.S. 949 (1993).

The *Tarsney* Court found that the Free Exercise Clause is not a specific limitation on the taxing and spending powers of Congress, but a constitutional guarantee of non interference by the government with religious practice. Id. at 936. As such, any "Free Exercise Clause injury does not arise from the expenditure itself, but from the resulting limitation on religious exercise." Id. Therefore, a Free Exercise Claim could not meet the second prong of the *Flast* test, and the plaintiffs did not have standing. While it emphasized the limited scope of *Flast*, the *Tarsney* Court did not expressly close the door on applications of the exception to claims arising under other provisions of the Constitution.

Plaintiffs in this case base their standing on their status as state taxpayers. The general approach by the courts is to treat state and federal taxpayers the same for the purposes of standing. [1]See *Tarsney*, 225 F.3d at 938 (applying *Flast* analysis to state taxpayer standing); ASARCO, 490 U.S. at 613-614 (likening state taxpayers to federal taxpayers); Minnesota Fed. of Teachers v. Randall, 891 F.2d 1354,1357 (1989)("[T]he effect of Flast was to harmonize in some respects federal and state taxpayer standing"); *Taub v. Kentucky*, 842 F.2d 912, 918 (6th Cir.1988),cert. denied 488 U.S. 870 (1988)(applying *Frothingham* rule to state taxpayer standing); *Romer*, 963 F.2d at 1402. This Court will therefore apply the *Flast* analysis to Plaintiffs' argument.

Plaintiffs' claim is that the state statutes violate the Equal Protection Clause of the Constitution. Plaintiffs have cited no relevant precedent to support their argument that the Equal Protection Clause operates as a specific limitation on the taxing and spending powers of Congress, as required by *Flast*, and to the Court's knowledge none exists. This Court is not persuaded by Plaintiffs' argument that the rule of *Flast* should nonetheless be extended to Equal Protection Claims, and finds therefore that Plaintiffs do not have taxpayer standing under *Flast*.

Plaintiffs also argue that the Supreme Court in *Crampton v. Zabriskie* expressly approved taxpayer suits in these situations.101 U.S. 601, 609 (1879). In *Crampton*, a group of New Jersey property owners sued the local municipal corporation for failing to appropriate funds when it issued bonds to purchase land for a court house from Mr.

---

[1] The dissent in *Tarsney* urged the Court to analyze the case under *Doremus v. Bd. of Education*, 342 U.S. 429, 433 (1952). While that approach has its merits, the *Tarsney* majority clearly rejected it in favor of an analysis under *Flast*. See also *Randall*, 891 F.2d at 1357 (holding that *Flast* and *Doremus* are relied on interchangeably where establishment clause violations are urged).

Crampton. The New Jersey Supreme Court held that the municipal corporation's actions were ultra vires. In affirming that court, the U.S. Supreme Court declared, "Of the right of resident tax-payers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county... there is at this day no serious question." Id. at 608; cited approvingly in *Frothingham*, 262 U.S. at 486-87; *Doremus*, 342 U.S. at 433; *Flast*, 392 U.S. at 93.

Plaintiffs argue that they are not protesting the expenditure of federal funds, but the state statute which provides the mechanism to receive and spend state and federal funds, and that the rule of *Crampton* will allow them to do so in federal court. While they acknowledge that *Crampton* was about a lawsuit over municipal spending, Plaintiffs argue that the word "municipal" can be understood to apply not only to towns and cities, but also to a state or nation, and therefore *Crampton* should be read under this broader meaning to allow state taxpayer suits. Plaintiffs' Omnibus Ans. at 14-15.

The Court disagrees. *Crampton* and its progeny clearly only relate to challenges to municipal, that is, city or town, spending by municipal taxpayers. The Supreme Court has expressly distinguished municipal taxpayers from federal taxpayers:

> "The interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is not inappropriate... [b]ut the relation of a taxpayer of the United States to the federal government is very different. His interest in the moneys of the treasury... is comparatively minute and indeterminable, and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity.

Frothingham, 262 U.S. at 48; see also *Doremus*, 342 U.S. at 434 (distinguishing state as well as federal taxpayers from municipal taxpayers). Plaintiffs have not convinced the Court that *Crampton* permits claims based on state taxpayer standing.

Since Plaintiffs failed to meet both the constitutional and prudential requirements for standing, this Court is without jurisdiction over this complaint.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiffs' motion for summary judgment is denied;
2. Defendants and Defendant-Intervenors' motions for summary judgment are granted. This claim is dismissed with prejudice.

Let judgment be entered.

Dated: August 13, 2001

s/Michael J. Davis
United States District Court Judge

Booth et al v. Ramstad-Hvass et al.
Civil File No. 00-1672 (MJD/JGL)

APPENDIX C

H. F. No. 699, 2nd Engrossment, 82nd Legislative Session (2001-2002)

A Bill for an Act relating to crime, etc.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA: . . .

Section 25. [APPROPRIATIONS] . . .

Subd. 2. [PUBLIC SAFETY] . . .

(c) $100,000 is appropriated from the general fund to the commissioner of public safety for grants to enable programs to provide safe housing and services to men who are domestic abuse victims and their children.

(d) $7,500,000 is appropriated from the general fund to the commissioner of public safety for per diem funding for shelters under Minnesota Statutes, section 611A.32, and for safe homes.

N. B., Section 611A.32 of Minnesota Statutes 2000 and 2002 is entitled "Battered Women Programs," and begins, "Subdivision 1. The commissioner shall award grants to programs emergency shelter services to battered women," etc.

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Scott Booth, et al., in behalf of themselves individually, and all others similarly situated,

Plaintiffs,

Court File
No. 00CV-1672 (MJD/JGI)

DEFENDANT-INTERVENORS' MOTION FOR SUMMARY JUDGMENT

vs.

Sheryl Ramstad Hvass, Commissioner of Corrections, at al.,

Defendants,

Domestic Abuse Project, et al.,

Defendant-Intervenors.

Defendant-Intervenors, Domestic Abuse Project, Central Minnesota Task for on Battered Women and Lakes Crisis Center move this Court of an order as follows:

1. Denying Plaintiffs' Motion for Summary Judgment on the ground that Plaintiffs lack standing as taxpayers to bring the present lawsuit as more fully set forth in Defendant-Intervenors' Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment or in the alternative, on the ground that 'Minnesota statutes §§61 1A.31 through 61 1A.375 are constitutional;

2 .Granting Defendants-Intervenors' Motion for Summary Judgment on the ground that Plaintiffs lack

standing as taxpayers to bring the present lawsuit as more fully set forth in Defendant-Intervenors' Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment or in the alternative, on the ground that Minnesota Statutes §§611A.3 1 through 611A. 3 75 are constitutional;

3. Dismissing Plaintiffs Complaint on the grounds set forth in paragraphs 1 and 2 above.

Respectfully Submitted,

University of Minnesota
Law School Clinics

Dated: March 14, 2001

By: s/Beverly Balos
Attorney I.D.#439X
Maury Landsman
Attorney I.D.#59857
Attorneys for
Defendant-Intervenors
University of Minnesota
Law School Clinics
299 19th Avenue South
Minneapolis, Minnesota 55455
(612) 625-5515

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Scott Booth, Thomas D. Loyd, Frank Solchaga, David Witte, Scott Wyman, Charles Perrin, Warren N. Higgins Jr., Knute Gladen, Michael Seeber, Terry Nyblom, and Stephen Blake, forming the R-KIDS Legal Action Committee, Richard Doyle of the Men's Defense Association, William J. Hageman, Charles W. Hurd, Klye Knutson, Jim Lovestar, Yves Nadeau, and Pradeep Ramathan of the National Coalition of Free Men, Twin Cities Chapter, in behalf of themselves individually and all others similarly situated,

Plaintiffs,

vs.

Sheryl Ramstad Hvass, Commissioner of Corrections; Michael O'Keefe, Commissioner of Human Services; Charles R. Weaver Jr., Commissioner of Public Safety; and Christine Jax, Commissioner of Children, Families, and Learning for the State of Minnesota,

Defendants,

Domestic Abuse Project, Central Minnesota Task Force on Battered Women, and Lakes Crisis Center,

Defendant-Intervenors.

Court File No. 00CV-1672(MJD/JGL)

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TO: Plaintiffs above-named and their attorneys John Remington Graham, 180 Haut de la Paroisse, St-Agapit (LOTB) Quebec G0S IZ0 Canada and Mark A. Olson, 2605

East Cliff Road, Burnsville, MN 55337 and Defendant-Intervenors and their attorney Beverly Balos, University of Minnesota Law School, 190 Law Center, 229-19th Avenue South, Minneapolis, MN 55455.

Defendants hereby move for summary judgment pursuant to Fed. R. Civ. P. 56(b) and on the pleadings and files herein. In support of their motion, Defendants submit Defendants' Memorandum in Support of Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment, Affidavits of Jennifer Park, Nancy Helmich, Marie Bibus, and Robert Erickson, and a Proposed Order.

Any response to this motion must be filed and served in accordance with Local Rule 7.1 (b) (2) and any order from the Court.

Defendants request oral argument on this matter. Pursuant to Local Rule 7.1(b)(D), Defendants will serve a Notice of Motion with the hearing date after the motion has been fully briefed and is ready for submission to the Court.

Dated: March 15, 2001

MIKE HATCH
Attorney General
State of Minnesota
s/MARK B. LEVINGER
Atty. Reg. No. 62686
JENNIFER K. PARK
Atty. Reg. No. 17757X

Assistants Attorney General

445 Minnesota St., #1100
St. Paul, MN 55101-2128
(651) 282-5717
ATTORNEYS FOR
DEFENDANTS

APPENDIX F

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Scott Booth, Thomas D. Loyd, Frank Solchaga, David Witte, Scott Wyman, Charles Perrin, Warren N. Higgins Jr., Knute Gladen, Michael Seeber, Terry Nyblom, and Stephen Blake forming the R-KIDS Legal Action Committee, Richard Doyle of the Men's Defense Association, William J. Hageman, Charles W. Hurd, Kyle Knutson, Jim Lovestar, Yves Nadeau, and Pradeep Ramanathan of the National Coalition of Free Men, Twin Cities Chapter, in behalf of themselves individually and all others similarly situated,

Plaintiffs

vs. Case No. No. 00CV-1672 (MJD/JGL)

Sheryl Ramstad Hvass, Commissioner of Corrections; Michael O'Keefe, Commissioner of Human Services; Charles R. Weaver Jr., Commissioner of Public Safety; and Christine Jax, Commissioner of Children, Families, and Learning for the State of Minnesota,

Defendants

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Come now the plaintiffs, and they make the following motion, which will be heard and decided by Hon. Michael J.

Davis, United States District Judge, at a time and place to be determined according to the local rules, and noticed later, to wit:

That the court grant to the plaintiffs a summary judgment, declaring that the Minnesota Battered Women's Act, as defined in paragraphs 5-6 of the amended complaint-being mainly Sections 611A.31, 611A.32, 611A.33, 611A.34, 611A.345, 611A.35, and 611A.36 of Minnesota Statutes 1999, as amended by Sections 10-26 in Article 2 of Chapter 445 of Minnesota Laws of 2000, and as implemented by Reorganization Order No. 182 -- is contrary to Amendments XIV and XIX of the United States Constitution, and thus null and void; declaring further that, because the Minnesota Battered Women's Act is unconstitutional, thus null and void, all spending under or through the said Act, from whatever source, is unauthorized by law, including but not exclusive of all funds appropriated by the Minnesota Legislature, and all funds used to support objectives approved under the said Act as allowed pursuant to Section 609.101, Subd. 2, of Minnesota Statutes or like acts of the Minnesota Legislature, and all funds appropriated by the Congress of the United States subject to conditions satisfied by the said Act; and granting an injunction against the defendants as officers of the State of Minnesota and their successors in office, prohibiting them jointly or severally from allowing, facilitating, or implementing any spending, from whatever source, in support of any object authorized by or approved under the said Act.

So moved, because, in light of the affidavit and exhibits served herewith and all other relevant parts of the record of this cause, there neither is nor can be any genuine issue of or concerning the following material facts, to wit:

1. The Minnesota Battered Women's Act is primarily an Act for the spending of public funds to aid women who have been battered or claim to have been battered by their husbands or male companions with whom they cohabit, and

is not a regulatory statute except insofar as it allows or establishes regulations and procedures to ascertain specific objects and to direct precise amounts of spending thereunder.

See motion exhibits A1, A2, and A3, and part 1 of the accompanying affidavit on motion exhibits.

2. Under the Minnesota Battered Women's Act, no funds are authorized to be spent for the benefit of men, and all money is authorized only for the benefit of women. It has been conceded by the defendants through their counsel that, under the said Act, during the fiscal year 1999, funds appropriated by the Minnesota Legislature for battered women's shelters, and spent as per diem grants, amounted to $17,163,276, and, during the fiscal year 2000, such funds thus appropriated and spent amounted to $21,019,471; that, under the said Act, during the fiscal year 1999, funds appropriated by the Minnesota Legislature for other services, designated as "battered women grants" in express language, amounted to $6,068,000, and, during the fiscal year 2000, such funds thus appropriated and spent amounted to $6,647,000; and that, during the fiscal year 1999, funds appropriated by the Congress of the United States in grants subject to conditions satisfied by the Minnesota Battered Women's Act, designated as "VOCA battered women" grants in express language, amounted to $1,715,000, and, during the fiscal year 2000, such funds so appropriated and spent amounted to $2,473,000.

See motion exhibits B1 and B2, and part 2 of the accompanying affidavit on motion exhibits.

3. The plaintiffs are male citizens of the State of Minnesota and of the United States, all of them residents now living and working in the State of Minnesota, and all of them regularly paying taxes of one kind or another to the State of Minnesota, either upon income, or sales, or property, or privileges, or franchises, or transactions, or other objects

defined by law. And, on this primary basis, they premise their standing or right to sue in this case for relief against continued operation of the Minnesota Battered Women's Act.

See motion exhibits C1, C2, and C3, and part 3 of the accompanying affidavit on motion exhibits.

See also *Crampton v. Zabriski*, 101 U. S. 601 at 609 (1880), cited with approval in *Frothingham v. Mellon*, 262 U. S. 447 at 486-487 (1923), and again in *Flast v. Cohen*, 391 U. S. 83 at 93 (1968).

4. Although they do not challenge any appropriation by the Congress of the United States, but only the Minnesota Battered Women's Act as the means by which the State of Minnesota meets the conditions established by Congress for receiving federal grants, leaving the Minnesota Legislature free to attempt other means for meeting such conditions, the plaintiffs as resident citizens and taxpayers of the State of Minnesota are raising a substantial question of equal protection of the laws under Amendments XIV and XIX of the United States Constitution as a limitation on public spending in general. And, on this additional basis -- even or as if the principles expounded in *Flast v. Cohen*, 391 U. S. at 102-106, were applicable to this case, or more largely to funds appropriated or generated by the Minnesota Legislature --, the plaintiffs as resident citizens and taxpayers of the State of Minnesota further premise their standing or right to sue for in this case for relief against continued operation of the Minnesota Battered Women's Act.

See motion exhibits C1, C2, and C3, and part 3 of the accompanying affidavit on motion exhibits.

See also *Frontiero v. Richardson*, 411 U. S. 677 (1973); *Mississippi University for Women v. Hogan*, 458 U. S. 718 (1982), and *United States v. Virginia*, 518 U. S. 515 (1996).

5. Battered women's shelters funded under and through the Minnesota Battered Women's Act engage advocates who

assist women secure ex parte orders of dubious constitutionality against their male partners, evicting them from their homes and depriving them of custodial or patental rights to their children without notice and hearing. And on this additional basis, together with their rights as resident citizens and taxpayers of the State of Minnesota, and as members of a larger class of persons potentially subject to such denial of rights to their homes and children without notice and hearing, the plaintiffs further premise their standing or right to sue in this case for relief against continued operation of the Minnesota Battered Women's Act.

See paragraph 10 of the amended complaint, paragraph 10 of the amended answer, and part 4 of the accompanying affidavit motion exhibits.

See also *Thiede v. Scandia Valley*, 14 N. W. 2d 400 (Minn. 1944); *Thompson v. Thompson*, 55 N. W. 2d 329 (Minn. 1954); and *Baker v. Baker*, 494 N. W. 2d 282 (Minn. 1992).

6. Battered women's shelters funded under and through the Minnesota Battered Women's Act publish sexist propaganda against men, portraying them as routinely and commonly oppressing women with physical violence and other forms of demeaning treatment and unjust aggression. And such propaganda has become so effective and respectable that public officers of the State of Minnesota, charged with the administration of justice, have themselves caused like propaganda against men in general to be published at public expense, creating a prejudicial atmosphere against men in general in the criminal courts and family courts of the State of Minnesota, especially in any case in which a male citizen has been accused of or is otherwise alleged to have committed an act of physical assault or some other violent or oppressive act against a woman. And on this additional basis, together with their rights as resident citizens and taxpayers of the State of Minnesota, and as members of a larger class of persons so defamed and affected by such sexist propaganda, the plaintiffs further premise their standing or

right to sue in this case for relief against continued operation of the Minnesota Battered Women's Act.

See amended complaint exhibits 1 and 2; motion exhibits D1, D2, D3, and D4; and part 5 of the accompanying affidavit on motion exhibits.

7. The Minnesota Battered Women's Act originated in a bill introduced in the 70th Legislature of Minnesota Legislature, and entitled "A bill for an act relating to women," etc., and it was first enacted as Chapter 428 of Minnesota Laws of 1977. Public records of proceedings in the Senate and in the House make clear that the bill was premised on the public policy that women are the victims of all or virtually all domestic violence. Both the express language and the legislative history of said Chapter 428 of Minnesota Laws of 1977, including the rejection of attempted amendments and speeches explaining statutory purpose, make inescapable the conclusion that the Minnesota Battered Women's Act was intended by the Minnesota Legislature to benefit women only, and to exclude men from any assistance whatever in dealing with domestic violence. No amendment of the Minnesota Battered Women's Act enacted since said Chapter 428 of Minnesota Laws of 1977 has ever changed this basic feature. In the most recent amendments, despite a minor change in statutory phrasing with respect to the recipients of services under the said Act, the funding for all battered women's shelters and services continues to be defined either by express language or statutory purpose as allowable for women only, excluding men, and all funding during the fiscal benefit of women only, excluding men; nor has the new language been defined by Section 22 in Article 2 of Chapter 445 of Minnesota Laws of 2000 so as to terminate discrimination against men, and the new nondiscrimination clause ordained by Section 23 in Article 2 of Chapter 445 of Minnesota Laws of 2000 conspicuously does not prohibit and by its terms plainly ordains discrimination against men under the said Act.

See motion exhibits El, E2, and E3; amended complaint exhibit 3; and part 6 of the accompanying affidavit on motion exhibits.

8. The discrimination against men ordained by the Minnesota Battered Women's Act has not been given and cannot be given an "extremely persuasive justification" which might overcome the legal presumption that legislation discriminating between men and women is unconstitutional, i. e., a justification which is substantially related to important government objectives, is genuine or well-founded in fact, is not invented post hoc in response to litigation, does not rely on overbroad generalities concerning differences between men and women, and is not based on fixed notions about the characteristics of men and women.

See amended complaint exhibit 4; motion exhibits F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, Fll, and F12; and part 7 of the accompanying affidavit on motion exhibits.

See also *Adkins v. Children's Hospital*, 261 U. S. 525 (1923); *Reed v. Reed*, 404 U. S. 71 (1971); *Stanley v.Illinois*,405 U.S. 645(1972); *Frontiero v.Richardson*, 411 U.S. 677(1973); *Taylor v. Louisiana*, 419 U. S. 522 (1975); *Stanton v. Stanton*, 421 U. S. 7 (1975); *Craig v. Boren*, 429 U. S. 190 (1976); *Orr v. Orr*, 440 U. S. 268 (1979); *Mississippi University for Women v. Hogan*, 458 U. S. 718 (1982); and *United States v. Virginia*, 518 U. S. 515 (1996).

9. Nothing has been called to the attention of the court, suitable for judicial notice, to rebut the legal presumption that the Minnesota Battered Women's Act is unconstitutional.

See amended complaint exhibit 4; motion exhibits Fl, F2, F3, F4, F5, F6, F7, F8, F9, F10, Fll, and F12; and part 7 of the accompanying affidavit on motion exhibits.

See particularly *Muller v. Oregon*, 208 U. S. 412 (1908), including especially the argument of Louis Brandeis for the State of Oregon. Cf. *Lochner v. New York*, 198 U. S. 45 (1905).

See also Lazuran, *What Constitutes "Adjudicative Facts" Within the Meaning of Rule 201 of the Federal Rules of Evidence*, 35 A. L. R. Fed 440 at 442-443, and Davis, *Judicial Notice*, 55 Columbia L. Rev. 945 at 952-959 (1955).

10. On the contrary, considerable empirical evidence suitable for judicial notice, and cited or included by the plaintiffs on this record, has been gathered in reputable surveys, analyzed by competent scholars, and published in peer-reviewed journals: such empirical evidence convincingly reveals that, in the United States and elsewhere, women not uncommonly initiate and carry out physical assaults against their husbands or male companions; that the rates of such physical assaults by women generally approach, equal, and sometimes excel the rates of such physical assaults by men; that, even adjusting rates of domestic violence for tangible injury inflicted, men also sustain injuries when attacked; that, as in some areas observed rates of domestic violence by men exceed corresponding rates for women, in other areas observed rates of domestic violence by women exceed corresponding rates for men; that, while social approval and observed rates of domestic violence by men has been steadily decreasing, social approval and observed rates of domestic violence by women has remained the same or slightly increased; and that, considered as a social phenomenon, domestic violence is and can be effectively addressed only as a problem shared by both men and women.

See amended complaint exhibit 4, especially motion exhibits F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, Fll, and F12, as identified in part 7 of the accompanying affidavit on motion exhibits, to wit:

-- Steinmetz, *The Battered Husband Syndrome*, 2 Victimology 499-509 (1977) [motion exhibit F1], an important pioneering article on domestic violence by women, #89 in the materials from Fiebert's bibiography [amended complaint exhibit 4], supplied to the Attorney General of Minnesota

during the conference before Hon. Jonathan G. Lebedoff, United States Magistrate, on November 29, 2000;

--Carrado et al., *Aggression in British Heterosexual Relationships: a Descriptive Analysis,* 22 Aggressive Behavior 401-415 (1996) [motion exhibit F2], an important article on the discovery of domestic violence by women in Great Britain, all or virtually previous British scholarship having focused exclusively on battered women, #16 in the materials from Fiebert's bibliography supplied to the Attorney General.

-- Straus, "Physical Assaults by Wives: A Major Social Problem" in Gelles & Loseke (eds.), *Current Controversies in Family Violence,* Sage Publications, Newbury Park, California, 1993, pp. 67-87 [motion exhibit F3], republished with minor variations as Straus, "Physical Assaults by Women Partners: a Major Social Problem" in Walsh (ed.). *Women, Men, and Gender: Ongoing Debates,* Yale University Press, New Haven, 1997, pp. 210-221, a comprehensive review of data from national family violence surveys, and of professional literature on domestic violence, #97 from the materials in Fiebert's bibliography supplied to the Attorney General;

-- Straus, "Trends in Cultural Norms and Rates of Partner Violence: An Update to 1992" in Stith & Straus (eds.), *Understanding Partner Violence: Prevalence, Causes, Consequences, and Solutions,* National Council on Family Relations, Minneapolis, 1995, pp. 30-33 [motion exhibit F4], a review of government and other surveys on domestic violence over a span of twenty years, #98 in the materials from Fiebert's bibliography supplied to the Attorney General;

-- White & Kowalski, *Deconstructing the Myth of the Nonaggressive Woman,* 18 Psychology of Women Quarterly 487-508 (1994) [motion exhibit F5], a feminist concession of domestic violence by women, including a review of professional literature, and a persuasive argument for the importance of acknowledging this reality to advance the

cause of women, #115 in the materials from Fiebert's bibliography supplied to the Attorney General;

-- Straus, "The Controversy Over Domestic Violence By Women" in Arriaga & Ostkamp (eds.), *Violence in Intimate Relationships*, Sage Publications, Thousand Oakes, California, 1999, pp. 17-44 (motion exhibit F6], and Hoff, *The Risk of Serious Physical Injury from Assault by a Woman Intimate*, Draft Paper 1999, 10 pp. (www.vix.com/menmag/nvawrisk.htm) (motion exhibit F7], respectively #99 and #40 in the materials from Fiebert's bibliography supplied to the Attorney General, being commentaries including reviews of professional literature, together with reanalyses of the data reported by Tjaden & Thoennes, *Prevalence, Incidence, and Consequences of Violence Against Women, Findings from the National Violence Against Women Survey*, U. S. Department of Justice, Washington D. C., 1998, [motion exhibit 8];

--Stets & Henderson, *Contextual Factors Surrounding Conflict Resolution While Dating: Results from a National Study*, 40 Family Relations 29-36 (1991) [motion exhibit 9], and White & Koss, *Courtship Violence: Incidence in a National Sample of Higher Education Students*, 6 Violence & Victims 247-256 (1991) [motion exhibit 10], two key papers on dating and courtship violence of men and women, respectively #92 and #116 in the materials from Fiebert's bibliography supplied to the Attorney General;

---Mercy & Saltzman, *Fatal Violence Among Spouses in the United States, 1976-1985*, 79 American Journal of Public Health 595-599 (1989) [motion exhibit 11], and Wilson & Daly, *Who Kills Whom in Spouse Killings?*, 30 Criminology 189-215 (1992). [motion exhibit 12], two key papers on murder of husbands by wives, and wives by husbands, #64 and #117 in the materials from Fiebert's bibliography supplied to the Attorney General.

The foregoing motion will be based on the documents and arguments of record in this cause. Costs and fees under

42 United States Code, Section 1988, will be sought, but NOT on any claim of irresponsible advocacy by adverse counsel.

Dated: January 19, 2001

For and in behalf of

JOHN REMINGTON GRAHAM
180 Haut de la Paroisse
St-Agapit (LOTB)
Quebec GOS Çanada
Telephone: 418-888-5049, and

MARK A. OLSON (#82119)
2605 East Cliff Road
Burnsville, Minnesota 55337
Telephone: 952-894-8893

APPENDIX G
BATTERED WOMEN

611A.31 DEFINITIONS.

Subdivision 1. For the purposes of sections 611A.31 to 611A.36, the following terms have the meanings given.

Subd. 2. "Battered woman" means a woman who is being or has been victimized by domestic abuse as defined in section 518B.01, subdivision 2.

Subd. 3. "Emergency shelter services" include, but are not limited to, secure crisis shelters for battered women and housing networks for battered women.

Subd. 4. "Support services" include, but are not limited to, advocacy services, legal services, counseling services, transportation services, child care services, and 24 hour information and referral services.

Subd. 5. "Commissioner" means the commissioner of the department of corrections or a designee.

History: 1977 c 428 s 1; 1983 c 262 art 1 s 6; 1986 c 444; 1991 c 272 s 8; 1995 c 226 art 7s11

611A.32 BATTERED WOMEN PROGRAMS.

Subdivision 1. **Grants awarded**. The commissioner shall award grants to programs which provide emergency shelter services to battered women and support services to battered women and domestic abuse victims and their children. The commissioner shall also award grants for training, technical assistance, and for the development and implementation of education programs to increase public awareness of the causes of battering. the solutions to

preventing and ending domestic violence, and the problems faced by battered women and domestic abuse victims. Grants shall be awarded in a manner that ensures that they are equitably distributed to programs serving metropolitan and nonmetropolitan populations. By July 1, 1995, community-based domestic abuse advocacy and support services programs must be established in every judicial assignment district.

Subd. 1a. **Program for American Indian women.** The commissioner shall establish at least one program under this section to provide emergency shelter services and support services to battered American Indian women. The commissioner shall grant continuing operating expenses to the program established under this subdivision in the same manner as operating expenses are granted to programs established under subdivision 1.

Subd. 2. **Applications.** Any public or private nonprofit agency may apply to the commissioner for a grant to provide emergency shelter services to battered women, support services to domestic abuse victims, or both, to battered women and their children. The application shall be submitted in a form approved by the commissioner by rule adopted under chapter 14, after consultation with the advisory council, and shall include:

(1) a proposal for the provision of emergency shelter services for battered women, support services for domestic abuse victims, or both, for battered women and their children;

(2) a proposed budget;

(3) evidence of an ability to integrate into the proposed program the uniform method of data collection and program evaluation established under section's 611A.33 and 611A.34;

(4) evidence of an ability to represent the interests of battered women and domestic abuse victims and their children to local law enforcement agencies and courts, county welfare agencies, and local boards or departments of health;

(5) evidence of an ability to do outreach to unnerved and underserved populations and to provide culturally and linguistically appropriate services; and

(6) any other content the commissioner may require by rule adopted under chapter 14, after considering the recommendations of the advisory council.

Programs which have been approved for grants in prior years may submit materials which indicate changes in items listed in clauses (1) to (6), in order to qualify for renewal funding. Nothing in this subdivision may be construed to require programs to submit complete applications for each year of renewal funding.

Subd. 3. **Duties of grantees.** Every public or private nonprofit agency which receives a grant to provide emergency shelter services to battered women and support services to battered women and domestic abuse victims shall comply with all rules of the commissioner related to the administration of the pilot programs.

Subd. 4. [Repealed, 1991 c 272 s 20]

Subd. 5. **Classification of data collected by grantees.** Personal history information and other information collected, . used or maintained by a grantee from which the identity or location of any victim of domestic abuse may be determined is private data
on individuals, as defined in section 13.02, subdivision 12, and the grantee shall maintain the data in accordance with the provisions of chapter 13.

History : 1977 c 428 s 2; 1978 c 732 s 1-3; 1981 c 311 s 39; 1S p1981 c 4 an 1 s 14; 1982 c 545 s 24; 1983 c 262 art 1 s 6; 1988 c 689 an 2 s 237; 1991 c 272 s 9,10;1992 c 571 art 6 s 21; 2000 c 445 art 2 s 10-13

611A.33 **DUTIES OF COMMISSIONER.**

The commissioner shall:

(1) Review applications for and award grants to a program pursuant to section 611A.32, subdivision 1, after considering the recommendation of the advisory council;

(2) Appoint the members of the advisory council created under section 611A.34, and provide consultative staff and other administrative services to the advisory council;

(3) After considering the recommendation of, the advisory council, appoint a program director to perform the duties set forth in section 611A.35;

(4) Design and implement a uniform method of collecting data on domestic abuse victims to be used to evaluate the programs funded under section 611A.32;

(5) Provide technical aid to applicants in the development of grant requests and provide technical aid to programs in meeting g the data collection requirements established by the commissioner; and

(6) Adopt, under chapter 14, all rules necessary to implement the provisions of sections 611A.31 to 611A.36.

History: 1977 c 428 s 3;197 8 c 732 s 4; 1983 c 262 art 1 s 6; 1991 c 272 s 11; 2000 c 445 art 2 s 14

611A34 ADVISORY COUNCIL ON BATTERED WOMEN.

Subdivision 1. **Generally.** The commissioner shall appoint a 12-member advisory council to advise the commissioner on the implementation and continued operation of sections 611A.31 to 611A.36. The advisory council on battered women and domestic abuse shall also serve as a liaison between the commissioner and organizations that provide services to battered women and domestic abuse victims. Section 15.059 governs the filling of vacancies and removal of members of the advisory council. The terms of the members of the advisory council shall be two years. No member may serve on the advisory council for more than two consecutive terms. Notwithstanding section 15.059, the council shall not expire. Council members shall not receive per diem, but shall receive expenses in the same manner and amount as state employees. -

Subd. 2. **Membership.** Persons appointed shall be knowledgeable about and have experience or interest in issues concerning battered women and domestic abuse victims, including the need for effective advocacy services. The membership of the council shall broadly represent the interests of battered women and domestic abuse victims in Minnesota. No more than six of the members of the advisory council on battered women and domestic abuse may be representatives of community or government organizations that provide services to battered women and domestic abuse victims. One-half of the council's members shall reside in the' metropolitan area, composed of Hennepin, Ramsey, Anoka, Dakota, Scott, Washington, and Carver counties, and onehalf of the members shall reside in the nonmetropolitan area. To the extent possible, nonmetropolitan members must be representative of all nonmetropolitan regions of the state.

Subd. 3. **Duties.** The advisory council shall:

(1) advise the commissioner on all planning, development, data collection, rulemaking, funding, and evaluation of programs and services for battered women and domestic abuse victims that are funded under section 611A.32, other than matters of a purely administrative nature;

(2) advise the commissioner on the adoption of rules under chapter 14 governing the award of grants to ensure that funded programs are consistent with section 611A.32, subdivision 1;

(3) recommend to the commissioner the names of five applicants for the position of domestic abuse program director;

(4) advise the commissioner on the rules adopted under chapter 14 pursuant to section 611A.33;

(5) review applications received by the commissioner for grants under section 611A.32 and make recommendations on the awarding of grants;

(6) ad-vise the program director in the performance of duties in the administration and coordination of the programs funded under section 61 1A.32; and

(7) advise the director of domestic violence and sexual assault prevention in matters related to preventing these occurrences of these types of violence.

Subd. 4. **Conflicts of interest.** A member of the advisory council shall be excluded from participating in review and recommendations concerning a grant application if the member:

(1) serves or has served at any time during the past three years as an employee, volunteer, or gone governing

board member of an organization whose application is being reviewed; or

(2) has a financial interest in the funding of the applicant organization.

History: 1977 c 428 s 4; 1983 c 260 s 50; 1983 c 262 art 1 s 6; 1984 c 655 art 1 s 36,37;1 Sp1985 c 9 art 2 s 97;1986 c 444;19$8 c 629 s 60; 1991 c 272 s 12; 2000 c 368 s 4; 2000 c 445 art 2 s 15-17

NOTE: See section 15.059, subdivision 5a, for expiration of council.

611A.345 ADVISORY COUNCIL RECOMMENDATIONS.

The commissioner shall consider the advisory council's recommendations before awarding grants or adopting policies regarding the planning, development, data collection, rulemaking, funding or evaluation of programs and services for battered women and domestic abuse victims funded under section 611A.32. Before taking action on matters related to programs and services for battered women and domestic abuse victims and their children, except day-to-day administrative operations, the commissioner shall notify the advisory council of the intended action. Notification of grant award decisions shall be given to the advisory council in time to allow the council to request reconsideration.

History: 1991 c27 2 s 13; 2000 c 445 art 2 s18

611A.35 ADVISORY COUNCIL ON BATTERED WOMEN AND DOMESTIC ABUSE PROGRAM DIRECTOR.

The commissioner shall appoint a program director. In appointing the program director the commissioner shall give due consideration to the list of applicants submitted to the commissioner pursuant to section 611A.34, subdivision 3, clause (3). The program director shall administer the funds appropriated for sections 611A31 to 611A.36, consult with

and provide staff to the advisory council, and perform other duties related to battered women's and domestic abuse programs as the commissioner may assign. The program director shall serve at the pleasure of the commissioner in the unclassified service.

History: 1977 c 428 s 5; 1983 c 262 art 1 s 6; 1986 c 444; 1991 c 272 s 14; 2000 c 445 art 2 s 19

611A.36 DATA COLLECTION.

Subdivision 1. **Form prescribed.** The commissioner shall, by rule adopted under chapter 14, after considering the recommendations of the advisory council, prescribe a uniform form and method for the collection of data on domestic abuse victims. The method and form of data collection shall be designed to document the incidence of assault on domestic abuse victims as defined in section 611A.31, subdivision 2. All data collected by the commissioner pursuant to this section shall be summary data within the meaning of section 13.02, subdivision 19.

Subd. 2. **Mandatory data collection.** Every local law enforcement agency shall collect data related to domestic abuse victims in the form required by the commissioner- The data shall be collected and transmitted to the commissioner at such times as the commissioner shall, by rule, require.

Subd. 3. **Immunity from liability.** Any person participating in good faith and exercising due care in the collection and transmission of data pursuant to this section shall have immunity from any liability,. civil or criminal, that otherwise might result by reason of the person's action.

History: 1977 c 428 s 6; 1978 c 732 s 5,6; 1981 c 311 s 39; 1982 c 545 s 24; 1983 c 262 ail 1 s 6; 1984 c 654 art 5 s .17;196 c444; 1991 c 272 s 15; 2000 C 445 art 2 s 20,21

611A.361 GENERAL CRIME VICTIMS ADVISORY COUNCIL.

Subdivision 1. **Creation.** The commissioner of corrections shall appoint a 12-member advisory council on general crime victims to advise the commissioner on the implementation and continued operation of chapter 611A with respect to victims of crimes other than sexual assault and domestic abuse. The general crime victims advisory council shall also serve as a liaison between the commissioner and organizations that provide services to victims of crime, and as, an advocate within the department of corrections for the rights of general crime victims.

Subd. 2. **Membership.** No more than six of the members of the general crime victims advisory council may be representatives of community or I governmental organizations that provide services to crime victims. One-half of the council's members shall reside in the metropolitan area, composed of Hennepin, Ramsey, Anoka, Dakota, Scott, Washington, and Carver counties, and one-half of the members shall reside in the non-metropolitan area. To the extent possible, nonmetropolitan members must be representative of all nonmetropolitan regions of the state.

Subd. 3. **Terms; vacancies; expenses.** Section 15.059 governs the filling of vacancies and removal of members* of he general crime victims advisory council. The terms of the members of the. . advisory council . shall be two years. No member may serve on the advisory council for more than two consecutive terms. The council expires on June 30, 2001. Council members shall receive expense reimbursement as specified in section 15.059.

Subd. 4. [Repealed, 1991 c 272 s 20]

History: 1991 c 272 s 16;1996 c 408 art 7 s 10; 1997 c 239 art 7 s 27

611A.362 [Renumbered 119A.20]
611A.363 [Renumbered 119A.211
611A.364 [Renumbered 119A.221
611A.365 [Renumbered 119A.23]

SHELTER FACILITY PER DIEM PAYMENTS.

611A.37 DEFINITIONS.

Subdivision 1. **Scope.** For purposes of sections 611A.371 to 611A.375, the terms defined have the meanings given them unless otherwise provided or indicated by the context.

Subd. 2. **Director.** "Director" means the director of the Minnesota center for crime victim services or a designee.

Subd. 3. **Center.** "Center" means the Minnesota center for crime victim services.

Subd. 4. **Shelter facility.** "Shelter facility" means a secure crisis shelter, housing network, safe home, or other facility operated by a nonprofit organization and designated by the center for the purpose of providing food, lodging, safety, and 24-hour coverage for battered women and. their children.

Subd. 5. **Designated shelter facility.** "Designated shelter facility" means a facility that has applied to, and been approved by, the center to provide shelter and services to battered women and their children.

Subd. 6. **Per diem rate.** "Per diem rate"' means a daily charge per person for providing food, lodging, safety,

and 24-hour coverage for battered women and their children.

Subd. 7. **Reserve amount.** "Reserve amount" means the amount t e center has reserved for each shelter facility.

Subd. 8. **Battered woman.** "Battered woman" has the meaning given' in section. 612A.31, subdivision 2.

History: 2000 c 445 art 2 s 22 OPERATION.

Subdivision 1. **Purpose.** The purpose of the per diem program is to provide reimbursement is timely, efficient manner to local pro rams for the reasonable and necessary costs of providing battered women and their children with food, lodging, and safety. Per diem funding may not be used for other purposes.

Subd. 2. **Nondiscrimination.** Designated shelter facilities . are prohibited from discriminating against a battered woman or her children on the basis of race, color, creed, religion, national origin, marital status, status with regard to public assistance, disability, or sexual orientation.

Subd. 3. **Data.** Personal history information collected, used, or maintained by a designated shelter facility-from which the identity or location of any battered woman may be determined is private data on individuals, as defined in section 13.02, subdivision 12, and the facility shall maintain the data in accordance with the provisions of chapter 13.

History: 2000 c 445 art 2 s 23

611A.372 DUTIES OF DIRECTOR.

In addition to any other duties imposed y law, the director, with the approval of the commissioner o public safety, shall:

(1) supervise the administration of :per diem payments to designated shelter facilities;

(2) collect data on shelter facilities;

(3) conduct an annual evaluation of the per diem program;

(4) report to the governor and the legislature on the need for emergency secure shelter; and

(5) develop an application process for shelter facilities to follow in seeking reimbursement under the per diem program.

History: 2000 c 445 art 2 s 24

611A.373 PAYMENTS.

Subdivision 1. **Payment requests.** Designated shelter facilities may submit requests for payment monthly based on the number of persons housed. Upon approval of the request for payment by the center, pa eats shall be made directly to designated shelter facilities from per diem funds on behalf of women and their children who reside in the shelter facility. Payments made to a designated shelter facility must not exceed the annual reserve amount for that facility unless approved by the director. These payments must not affect the eligibility of individuals who reside in shelter facilities for public assistance benefits, except when required by federal law or regulation.

Subd. 2. **Reserve amount.** The center shall calculate annually the reserve amount for each designated

shelter facility. This calculation may be based upon program type, average occupancy rates, and licensed capacity limits. The total of all reserve amounts shall not exceed the legislative per diem appropriation.

History: 2000 c 445 art 2 s 25

611A.375 APPEAL PROCESS.

(a) Except as provided in paragraph (b},. a designated shelter facility may, within 30 days after receiving a decision by the center to deny payment, request reconsideration. A designated shelter facility which is denied payment upon reconsideration is entitled to a contested case hearing within the meaning of. chapter 14.

(b) A facility may not appeal a decision by the center to deny payments in excess of the facility's reserve amount.

History: 2000 c 445 art 2 s 26